



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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February 22, 2017

Josh Wilson
Councilmember City of Los Alamitos
3191 Katella Ave
Los Alamitos, CA 90720

Re: Your Request for Advice
Our File No. A-17-034

Dear Mr. Wilson:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act").¹

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

QUESTION

Do you have a conflict of interest in decisions concerning the Los Alamitos Boulevard Median Improvement Project?

CONCLUSION

Yes. Under the facts provided, making, participating in making, or using you position to influence a decision concerning the Los Alamitos Boulevard Median Improvement Project will have a reasonably foreseeable material financial effect on one of your sources of income, Southland Credit Union.

FACTS

You took office as a member of the Los Alamitos City Council on December 12, 2016. You are currently employed by Southland Credit Union ("Southland"), a not-for-profit 501(c)(14) credit union, with its corporate office located in Los Alamitos with seven additional offices in Southern California. You have worked for Southland for more than five years. Your position with Southland is "Director of Advertising and Market Research," an upper-management position that reports to a

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

division vice president. Southland is located at 10701 Los Alamitos Boulevard, within the Los Alamitos Boulevard Median Improvement Project area, between Catalina and Sausalito Streets.

Los Alamitos Boulevard is a major north-south arterial roadway extending through the City's downtown and is characterized by primarily commercial development. The City is in the process of implementing the Los Alamitos Boulevard Median Improvement Project (the "Project") to improve safety, traffic flow, walkability, and aesthetics. The construction of raised median islands is proposed where striping currently exists.² The project will also narrow the roadway and enlarge the parkway and sidewalk areas along Los Alamitos Boulevard in furtherance of a walkable downtown environment.

Work on the Project will be divided into four segments along approximately one-half mile of Los Alamitos Boulevard between Cerritos Avenue and Katella Avenue. The medians will include landscaping, irrigation, and the installation of street lighting as well as necessary infrastructure. The median improvement project will require restriction of "left-turn" movements at existing public street intersections and/or commercial driveways (effectively restricting vehicular access to right-turn in/out only movements, with increased U-turns from vehicles traveling south and north), which will result in adjustments to current traffic patterns.

Raised Median Island Features

The series of raised median islands proposed along Los Alamitos Boulevard consist of fixed objects such as trees, boulders, monument signs and light poles, which would be set back from the median island curb. The features proposed within the medians are described below.

- *Landscape* - All of the medians will be designed to ensure that landscaping within the raised median island does not restrict sight distance. The City has selected appropriate paved surface treatments, plant materials and irrigation systems that will enhance the character of Los Alamitos Boulevard and can be maintained efficiently and in a cost-effective manner. Trees have been included to beautify and calm traffic by making the road appear narrower. Landscaping within the medians proposed along Los Alamitos Boulevard will be consistent and complementary in order to create the desired statement.
- *Lighting* - Sufficient lighting has been incorporated into the design of the medians to enhance safety and security of pedestrians walking along Los Alamitos Boulevard after sundown. Decorative lighting fixtures will be included to create a unique sense of place for both motorists and pedestrians. Lighting that compliments the gas lamps used in Old Town has been selected to provide for continuity.
- *Banners and Decorations* - Banner hardware has been incorporated into the design of the street lighting fixtures/poles to ensure that year-round banners as well as holiday and/or special event related banners can be accommodated. This will include the necessary power

² Centerline stripes are used to separate traffic lanes that have opposite directions of travel. Striping is also important to mark left and right turn lanes, two-way left turn lanes, and median areas. These lines help guide drivers into proper position on the road so that they can safely make their desired turn.

for electrified decorations. Additionally, a holiday tree has been incorporated as a centerpiece of the median design.

- *Signage* - Signage within the raised median islands has been incorporated as a way to direct visitors to shopping and dining opportunities and to provide for statement at the entrance to the community.
- *Storm water Capture* - Landscaped medians will also reduce the amount of impervious surfaces in the roadway, which will reduce storm runoff and increase infiltration through the pervious surface of the landscaped median. Medians will be designed to retain, cleanse, and infiltrate storm water runoff.
- *Offset Crosswalks* - The proposed project also includes offset crosswalks. Offset crosswalks are split by the median and offset on either side of the median. This design forces pedestrians to turn in the median and face oncoming traffic before turning again to cross the second half of the roadway. These features are intended to improve safety, especially where there is no signal control at mid-block and T-intersection locations.
- *Median Placement* - The proposed placement of the raised median islands will channelize left-turn lanes and create a unique visual identity to the Los Alamitos Boulevard corridor. The median islands will reduce conflicts between pedestrians and automobiles at intersections and at designated midblock crosswalks.
- *Safety* - Raised Center Medians will improve the safe travel of automobiles and pedestrians. The City specifically notes that turning left while exiting Southland Credit Union poses an existing safety issue. However, the raised median islands can significantly reduce the complexity of turning movements along Los Alamitos Boulevard by assuring that traffic moves in a direction that is predictable.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. Section 82048 defines “public official” as every member, officer, employee, or consultant of a state or local government agency, including city councilmembers.

Financial Interest

Financial interests from which conflicts of interests may arise are defined in Section 87103 as follows:

- An interest in a business entity in which the official has a direct or indirect investment of \$2,000 or more (Section 87103(a)) or in which the official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d).)

- An interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b).) An indirect interest in business or real property means a business or real property interest owned by the spouse or dependent child of the official.
- An interest in a source of income to the official, including promised income, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c).) “Income” is defined to include any community property interest in the income of a spouse and a pro rata share of the income of any business entity or trust in which the official (or his or her spouse) owns directly, indirectly, or beneficially, a 10-percent or greater interest. (Section 82030(a).)
- An interest in a source of gifts to the official if the gifts aggregate to \$470 or more within 12 months prior to the decision. (Section 87103(e).)
- An interest in the official’s personal finances, including those of the official’s immediate family. This is known as the “personal financial effects” rule. (Section 87103.)

According to your facts you have an interest in Southland as a source of income. (Section 87103(c).)

Foreseeability and Materiality

A financial effect is presumed to be reasonably foreseeable when it is explicitly involved in a decision. Financial interests that are explicitly involved include an interest that is a named party in, or subject of, a government decision. (Regulation 18701(a).) Southland is not explicitly involved in the decision concerning the Median Improvement Project. For interests that are not explicitly involved, as here, the effect need not be likely to be considered reasonably foreseeable. “In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable.” (Regulation 18701(b).)

Regulation 18702.3 sets forth the standard for materiality applicable to the effect of a decision on an official’s interest in a source of income. Regulation 18702.3(a)(2) provides, in relevant part, that if the source of income is a business entity, materiality is determined pursuant to the standard for materiality for the effect of a decision on an official’s interest in a business entity contained in Regulation 18702.2. Regulation 18702.2(a) provides, in relevant part:

“[T]he reasonably foreseeable financial effect of a governmental decision (listed below in (a)(1) through (a)(12)) on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the governmental decision:

“(6) Involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the parcel in which the official has an interest will receive new or improved services that are distinguishable from improvements and services that are provided to or received by other similarly situated properties in the official’s jurisdiction or where the official will otherwise receive a disproportionate benefit or detriment by the decision.”

The project involves the construction of raised median islands where none currently exist, and will include landscaping, irrigation, and the installation of street lighting. The median improvement project will result in adjustments to current traffic patterns. The City specifically notes that turning left while exiting Southland poses an existing safety issue. The project seeks to improve safety for vehicles and pedestrians, provide greater vehicle access for adjacent business, as well as to provide significant aesthetic improvements, including lighting, landscaping, and signage, along an approximately half-mile section of Los Alamitos Boulevard where Southland is situated. Based on the facts presented, it is reasonably foreseeable that decisions relating to the Median Improvement Project will have a material financial effect on your source of income, Southland.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Hyla P. Wagner
General Counsel



By: ~~Zachary W. Norton~~
Senior Counsel, Legal Division

ZWN:jgl